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Testimony
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before

Committee on Government Reform
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Mr. Chairman and Members of the Committee on Government Reform: I am pleased to be able to testify on regulatory reform, and specifically on H.R. 2432, the “Paperwork and Regulatory Improvements Act of 2003.” I am an economist and have spent years in academics as well as in various regulatory positions in government and am the founder and director of the Mercatus Center’s Regulatory Studies Program. This testimony reflects my views and does not represent an official position of George Mason University.

I especially appreciate the hearing today because I strongly support the proposals contained in H.R. 2432 and because I believe you are addressing a very real problem that is affecting the long term health of our economy and the welfare of U.S. citizens.

The cost of complying with regulations is a tax, since the individuals who must use their resources to comply with a regulatory mandate are doing so in the pursuit of a public goal specified by a government agency. Rather than government levying taxes and then using those tax revenues to fund the project, in the case of regulations, government simply requires private citizens and businesses to bear the costs of the government program directly through mandates. Regulatory “taxes” that the government imposes on businesses and individuals are “off-budget” expenditures of government – individuals pay these expenditures out of their pockets because government requires them to do so, but these expenditures and the associated programs are not reflected in the budget of the U.S.

In fact, there is relatively little accurate information on the size of these regulatory “taxes,” or the regulatory “budget” of the U.S. Currently, we do not collect information on the size of the regulatory “budget” of the U.S. the way we collect information on the

size of the fiscal budget. Congress does not consider and discuss specific regulatory programs and the costs they impose the way it debates the impact of specific spending programs on the size of the fiscal budget. Congress may spend much time discussing the need to increase or decrease the tax burden on American citizens, but it cannot effectively debate the size of the “regulatory tax” burden on citizens.

This lack of information hinders the ability of Congress and citizens to hold agencies and policymakers accountable for the effectiveness of various government programs. It is difficult to evaluate which programs are most effective at achieving their goals without sufficient information about the cost of the programs.

Estimates and Proxies for the Size and Growth of the Regulatory Budget

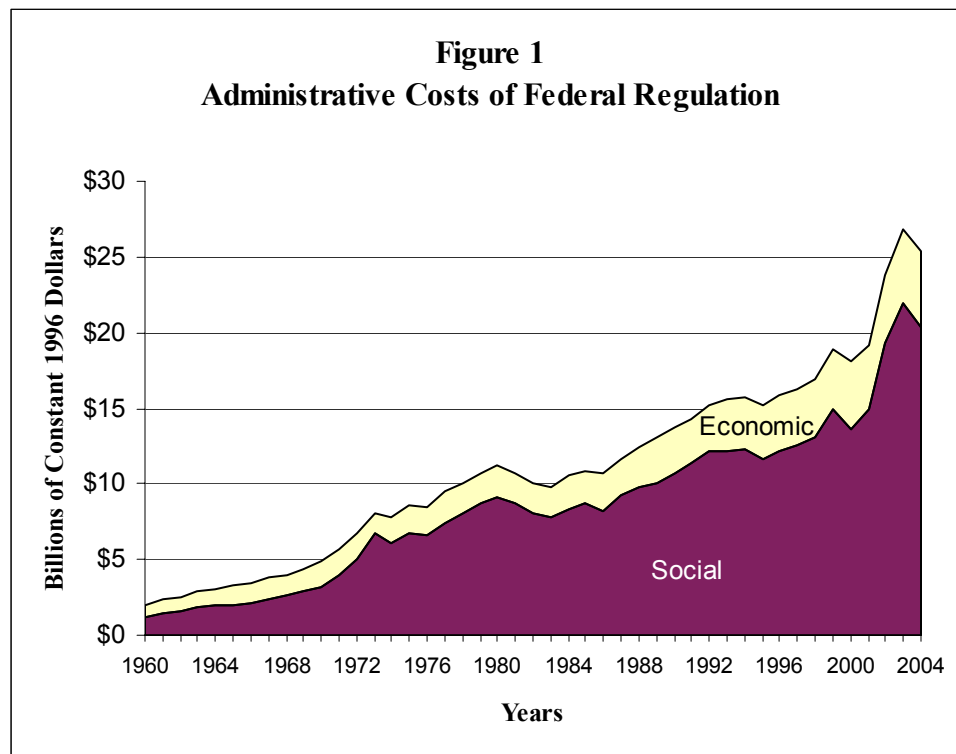
Currently, the most cited and arguably the best estimate of the total annual cost of regulations imposed by the federal (state and local too?) government on Americans is \$843 billion in 2000. This estimate is the result of a 2001 study by Professors W. Mark Crain of George Mason University and Thomas Hopkins of the Rochester Institute of Technology and commissioned by the Small Business Administration. The Small Business Administration had previously published estimates of the total cost of regulations in 1995 and these studies remain the most consistently cited estimates on the total cost of regulations. Unfortunately, these studies are not published regularly, although it appears that the SBA is attempting to update the study more frequently than in the past.

OMB is required by law (Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (section 638(a))) to estimate the total costs and benefits of all federal regulations each year. Unfortunately, OMB’s study, which has been produced since 1997 (every year except 1999), does not provide a reliable estimate of the total cost of regulations for several reasons. First, OMB simply uses the estimates of costs and benefits that agencies provide, and many of these estimates are very inaccurate. OMB has not made their own independent estimates of the costs of individual regulations. Second, OMB’s estimates cover only a few years (the last 10 years in the most recent report). Third, OMB’s estimates include the costs of the largest regulations (generally over \$100 million or more per year), which OMB recognizes may significantly understate total costs. The combination of relying on agency estimates and focusing on a subset of regulatory costs is that the resulting total estimates are simply not believable. In its 2003 report, OMB reported total regulatory cost estimates of \$38 to \$48 billion per year – a small fraction the SBA’s more comprehensive estimate of \$843 billion per year.

Our Regulatory Studies Program is attempting to provide further estimates of the regulatory burden. As an example, we have published a study on the total cost of workplace regulations, and on the impacts on the manufacturing sector of workplace regulations. We have other studies under way to estimate costs of specific regulations. But there is much more to do.

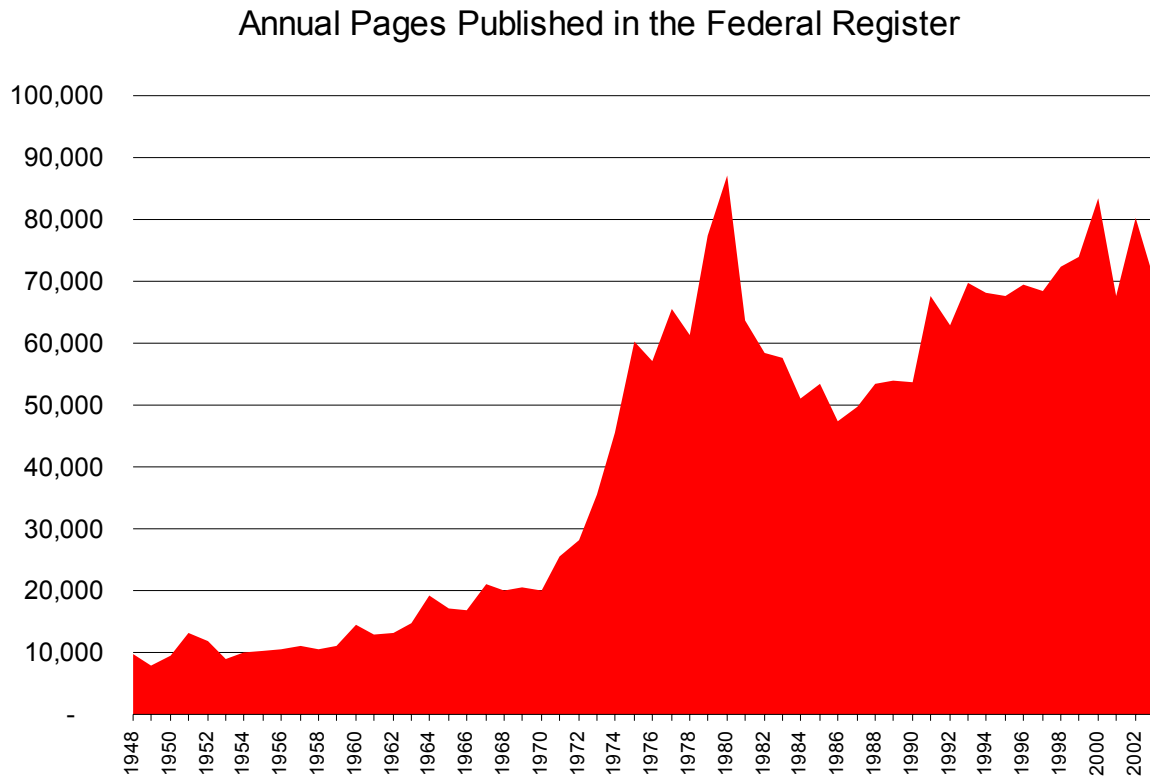
Until such time as we have a more accurate estimate of the cost that each regulatory program imposes on Americans, we cannot track the growth or size of government, and we cannot have true picture of the total taxes paid by U.S. citizens to fund public programs. Indeed, it is difficult to even know what is happening to the size of the regulatory state from year to year.

There are several proxies that are commonly used to try to track the year-by-year change in the regulatory costs imposed on Americans. Perhaps the best measure for the growth in the regulatory state is the total size of the budgets of regulatory agencies, or the on-budget cost of writing, administering, and enforcing regulations. This information was originally published by the Weidenbaum Center at Washington University in St. Louis in 1977, and includes fiscal costs going back to 1960. Since last year, this report has been a joint project of the Weidenbaum Center and the Mercatus Center. The newest report, authored by my colleague Susan Dudley and Melinda Warren of the Weidenbaum Center has just been released today, and I would like to include the report as part of this testimony. Figure 1 is taken from this latest study, and shows the same pattern in the growth of the regulatory state as the other studies and measures of regulations.



A simpler proxy for regulatory growth is the number of pages in the Federal Register. However inaccurate this may be, at least the trends in the number of pages in the Federal Register, as depicted in Figure 2, appears to be consistent with the information in the SBA and Mercatus-Weidenbaum studies.

Figure 2



Another study published annually tracks the number of proposed and final rules published in the Federal Register. "Ten Thousand Commandments: An Annual Snapshot of the Federal Regulatory State," authored by C. W. Crews, Jr. and published by the Cato Institute, shows that while Federal Register pages increased dramatically in 2002, the number of final rules issued was only slightly in 2002.

All the available evidence indicates that the cost of regulations that is paid by private individuals and businesses is large and growing. The increase was dramatic during the latter part of the 1970's, slowed somewhat during the 1980's, but is increasing again, especially September 11, 2001.

Past Efforts at Regulatory Reform

Every modern President has tried to manage the regulatory state. Every President since President Nixon had some kind of regulatory review program within the executive office of the President or Vice President. Executive orders provide instructions to agencies about how to analyze regulations, and the procedures they must follow in writing regulations have been. Congress, for its part, has enacted a number of regulatory reform laws over the years, from the Paperwork Reduction Act, the Regulatory Flexibility Act, the Unfunded Mandates Reform Act, the Small Business Regulatory

Enforcement Fairness Act, the Congressional Review Act, the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (section 638(a)), and the Truth in Regulating Act of 2000.

These actions by the executive and the laws passed by Congress have been helpful, but if one considers the information in the Figures 1, 2, and 3 above, it appears that all these efforts have not managed to control the growth in regulations.

Furthermore, as noted by members of this Committee, there are significant gaps in the implementation of some of these past reform efforts.

Current Reform Proposals in H.R. 2432, The Paperwork and Regulatory Improvements Act of 2003

In order for Congress and policymakers to discuss and make decisions about regulatory programs, I would argue that they should have more accurate information about the size of the regulatory state and the regulatory “taxes” that the program will impose on citizens in pursuit of the benefit of imposing the regulation. That is, I believe that policymakers should have the same kind of information about regulations that is produced for government programs when Members debate how much to appropriate to a specific program. Furthermore, Congress and executive branch policymakers should have “regulatory budgets” as well. That is, they should know the total regulatory burden they place on the private sector; increasing those “regulatory taxes” should be debated in the same way that policymakers debate whether or not to increase other kinds of taxes.

In short, I believe it appropriate, fair, -- and indeed essential -- for regulatory programs to be treated just like other fiscal programs of the federal government.

H.R. 2432, the “Paperwork and Regulatory Improvements Act of 2003” takes several important steps in this direction. All the elements of this bill will provide valuable information and incentives to make better regulatory decisions.

The following are answers to the specific questions you raised.

1. Should Congress eliminate exemptions from various paperwork review and regulatory due process requirements in the Farm Security and Rural Investment Act of 2002?

It is my firm belief that there should be few exemptions, if any, to the requirements of the Paperwork Reduction Act or the Administrative Procedures Act. These are important procedural and substantive, restraints on the ability of departments and agencies to impose regulatory and paperwork burdens. These restraints are time-tested and not overly constraining; but they are important since agency rule-writers are not accountable to the public for their jobs or their livelihoods

in the event that the burdens of the regulations they write are harmful, capricious, or overly burdensome.

In the case of the Farm Security and Rural Investment Act of 2002, it is my understanding that there is little justification for the exemptions provided. The paperwork and regulatory burdens of this law should be subject to the same treatment and standards as those of other agencies.

2. Should the General Accounting Office (GAO) have permanent staff devoted solely to evaluating certain regulations for the purpose of providing Congress an independent perspective on the value and effectiveness of these regulations?

I believe it is very important to have some organization provide Congress with an independent perspective on regulations. Indeed, I founded the Regulatory Studies Program because my experience in regulatory agencies and as Administrator for Information and Regulatory Affairs exposed the need for high quality, independent analyses of regulations and regulatory issues. Our Regulatory Studies Program's objective is to provide quality regulatory analyses from the perspective of the public interest, and independent of any special interest. But there is much to do, and I welcome the addition of other organizations, especially the GAO to the task.

Agency regulation-writers receive few comments and analyses of their regulatory proposals that are independent of a special interest. Even OIRA is not totally independent, as it is part of the Administration that is proposing the regulation. Few speak for the average citizen or the public interest. Yet it is the average citizen who often bears a large portion of the cost of a regulation.

Accordingly, I have testified in favor of an independent office of regulatory analysis. And I believe that the General Accounting Office will not be able to implement its mandate to review and analyze regulations as required without permanent staff.

This question raises two issues: first, Congress has never appropriated funds to fund the Congressional Office of Regulatory Analysis; second, the GAO has indicated that it intends to fulfill its mandate, if funded, by contracting the analysis to outsiders.

With regard to the first issue, I have been very disappointed that the office has not yet received funding for the pilot project. It would make a skeptic question whether Congress was really sincere in its vote to establish the office. It is high time for Congress to "put money where its mouth is" and fund the office.

On the second issue, there are both costs and benefits of contracting out the analytical work. The benefits are that the GAO will not have to have as large a staff dedicated to regulatory analysis and would have greater flexibility in its staffing decisions. Using outside contractors also could make it easier for the agency to be

responsive to Congressional requests, if the requests do not flow evenly over a period of time or if specialized expertise is required. The use of outsiders could also provide the GAO with greater access to a wider variety of skills and knowledge than it might otherwise have if all the analysis was done in-house. The use of outside analysts, especially if they are academics, can also foster new knowledge over time, if GAO projects spawn follow-on research by the analyst.

There are also disadvantages of using outside analysts. The greatest disadvantage is that the GAO might not be able to answer regulatory queries as quickly as desired, as using outsiders generally requires a longer lead time. In addition, the GAO would have to have some expertise in-house in order to monitor and evaluate the analysis provided.

Our Regulatory Studies Program uses academics and other outside analysts for some of our studies and Public Interest Comments. The Public Interest Comments evaluate regulations from the perspective of the public interest rather than any special interest, and provide a careful analysis of proposed regulations. In our experience, outside academics can be excellent regulatory analysts, and can bring good quality analysis and academic knowledge to a regulatory issue. We also like to use academics because the regulatory work can stimulate their own further research, which will pay benefits to regulatory knowledge in the future.

However, one should also understand that our RSP staff spends a considerable amount of time working with academics to provide background information about regulatory analysis and the regulatory process, at least at the beginning. GAO will need to have some very experienced and knowledgeable individuals if this program is to generate useful studies and analyses.

3. Do you believe Congress should require agencies to submit annual estimates of the costs and benefits associated with Federal rules and paperwork for each of their agency's programs?

Yes. Furthermore, I believe these estimates should be reviewed by OMB's Office of Information and Regulatory Affairs (OIRA) and the GAO office of regulatory analysis, and made available for public analysis and discussion. Agencies can't be held accountable for the regulatory taxes they impose on American citizens unless these off-budget expenditures are measured and tracked.

4. Should Congress integrate OMB's regulatory accounting statement into the President's budget and make this statement cover the same time period as the President's budget?

Yes. The off-budget impact of regulations should be not be hidden from public scrutiny. Regulatory costs should be treated like a tax, or a cost of a government program, and should be tracked as such. Regulatory accounts should be treated the way that the fiscal budget is accounted for. Only then can agencies be held accountable for

their work, and only then can we have an educated discussion of how we want to allocate the scarce resources of our nation. H.R. 2432 takes important steps toward this objective.

Thank you for giving me the opportunity to share my views on this important topic.